

## The Restitution Payment for the Child Victims of Sexual Crime or Violence Borne by the State



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**ABSTRACT:** Children are individuals who are still frail in terms of physic, economy, and knowledge hence they are still easily swayed by the environment and easily exploited by people who have advantages in physic, economy, and knowledge resulting in children in conflict or facing the law. Children in conflict or facing the law can be divided into children who are perpetrators of crimes, children who become victims of crimes, and children who become witnesses in criminal acts. Children are often victims of crime or sexual violence within the family, school, and neighborhood. Being a victim of sexual violence harms victims, such as the emergence of hopelessness, inferiority, lack of confidence, stress, and prolonged trauma. The Law of The Republic of Indonesia No. 35 of 2014 concerning Child Protection protects victims by providing child victims the right to compensation or restitution, including child victims of sexual crimes/violence.

This study employed an empirical legal approach. This article is aimed to perceive how the process of child victims applying for restitution rights to court and how the imposition of restitution can be effective for child victims of crime or sexual violence. The compensation or restitution for child victims of sexual crime or violence is submitted to the court through the Indonesian Witness and Victim Protection Agency (LPSK) and for the imposition of restitution to be effective, property belonging to the accused must be confiscated which will later be auctioned off as a calculation of compensation or restitution to be given to the child victims.

**KEYWORDS:** restitution, child victims, crime/sexual violence.

### A. BACKGROUND

Children are a gift from God in the family. Within the scope of the family, children are the next generation of the family, while within the scope of the state, children are also the next generation of the nation. Children as the next generation for both the family and the nation must be raised and protected by the family, society, and state. Children must also be educated and prepared to become the next generation of superior nations. Children as the next generation possess an important role in building the country and nation in the future. In order to realize the development of a quality nation and state, it is only natural that children's rights receive more attention.<sup>1</sup>

The 1945 Constitution as the foundation of the Republic of Indonesia guarantees the human rights of every citizen. Indonesian children are part of the citizens of the Republic of Indonesia, and thus the rights of Indonesian children are also guaranteed by the 1945 Constitution. The children's rights are regulated in Article 28 B paragraph 2 of the 1945 Constitution. The children's rights guaranteed by the 1945 Constitution are the right to survival, the right to grow and develop, and the right to protection from violence and discrimination. Children have rights that are specifically different from adults' rights, this is because children are very vulnerable to violence, abuse, and exploitation.<sup>2</sup> The Law no. 39 of 1999 concerning Human Rights article 5 along with its elucidation of article 5 classifies children as a vulnerable group in society thus they reserve the right to receive more treatment and protection with due respect to their specificity.

Children are individuals who are still frail in terms of physic, economy, and knowledge hence children are still easily swayed by the environment and easily exploited by people who have advantages in physic, economy, and knowledge. Children as a vulnerable group must receive good protection from the family, as the closest being to the child, as well as protection from the state since children's protection is a decree from the 1945 Constitution. Children protection can be interpreted as providing security,

<sup>1</sup> Beniharmoni Harefa, Kasus Menarik Seputar Hukum Perlindungan Anak, ( Yogyakarta: Depublish, 2021) , page.1

<sup>2</sup> Nur Rochaeti, "Implementasi Keadilan Restoratif dan Pluralisme Hukum Dalam Sistem Peradilan Pidana Anak di Indonesia, Jurnal Masalah-Masalah Hukum, Vol. 44, No.2, April 2015, page. 150

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safety, and comfort for children from all disturbances, threats, and obstacles or anything that contributes to a loss or fear, both in the environment where they live or in the family through the nurture of their parents to give the best for their children, spend the time to teach their children, invite them to play or other things that make children not to feel bored or fed up, and the most important thing is a harmonious family between father, mother, and children.<sup>3</sup>

Based on the concept of *parents patriae*, i.e. the state provides attention and protection to children as parents do to their children, the treatment of children in problems with the law must also be carried out in the best interest of the child and be based on Pancasila values.<sup>4</sup> The Republic of Indonesia protects Indonesian children by issuing Law Number 23 of 2002 concerning Child Protection. Law Number 23 of 2002 concerning Child Protection has undergone several amendments. The first amendment was issued by amendment to Law Number 35 of 2014 concerning the Amendment to Law No. 23 of 2002 and the second was amended by Law No. 17 of 2016 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 Concerning Child Protection Becomes Law.

The legal definition of a child based on Law Number 23 of 2002 concerning Child Protection is someone under the age of 18 (eighteen) including a child who is still in the womb, while the definition of child protection is all activities to protect and guarantee children and their rights so that children can live, grow and develop in accordance with the dignity and get protection from discrimination and violence.

Discrimination and violence are more prone to be experienced by children in certain situations or circumstances, for example, children in emergencies, children in conflict with the law, and so on. Furthermore, the state provides special protection for children who are in certain circumstances such as children in emergencies, children in conflict with the law, children in minority and isolated groups, children who experience economic and/or sexual exploitation, children who are trafficked, children who become victims of abuse of narcotics, alcohol, psychotropic and other addictive substances (drugs), children who become victims of physical and/or mental violence and children with disabilities.

Children in conflict or facing the law are included in the category of children who are given special protection. Special protection for children who are in conflict or faced with the law is carried out by the state by issuing Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. Children facing the law consist of children who are in conflict with the law or children who are perpetrators of criminal acts, children who are victims of criminal acts, and children who witness criminal acts.

A child in conflict with the law or a child who commits a crime is a child who is older than 12 (twelve) years old but has not yet reached the age of 18 (eighteen) years suspected of committing a crime. Law Number 11 of 2012 concerning the Juvenile Criminal Justice System provides special protection for children who are suspected of being perpetrators of crimes by regulating procedures for legal treatment of children suspected of being perpetrators of criminal acts from the examination at the investigation stage, examination at the prosecution and trial stages up to the stage the implementation of the judge's decision is different from the treatment of criminal acts committed by adults. Children as witnesses and victims of criminal acts are given protection based on Law no. 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection. Law no. 35 of 2014 provides special protection for victims of criminal acts who are still classified as children according to the crime. This special protection is given to child victims of narcotics, alcohol, psychotropic, and addictive substance abuse, child victims of pornographic crimes, child victims of trafficking, kidnapping, and/or sales, child victims of psychological and/or physical violence, child victims of sexual crime or violence, child victims of terrorist networks, child victims of abuse and neglect, as well as child victims of stigmatization of being labeled related to the condition of their parents. Law no. 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection provides for the right of child victims of crime to ask for compensation or the right to restitution which is the responsibility of the perpetrator of the crime by submitting it to court.

Based on data from the Indonesian Child Protection Commission the number of children in conflict with the law with the status of child victims is as follows:

| No | Child Victims   | 2016 | 2017 | 2018 | 2019 | 2020 |
|----|---|------|------|------|------|------|
| 1  | Child Victims of Physical Violence (Abuse, beatings, fights, etc.)    | 146  | 173  | 166  | 157  | 249  |
| 2  | Child Victims of Psychological Violence (Threats, Intimidation, etc.) | 64   | 62   | 51   | 32   | 119  |
| 3  | Child Victims of Sexual Violence (Rape/Abuse)                         | 192  | 188  | 182  | 190  | 419  |
| 4  | Child Victims of Sodomy/Pedophilia                                    | 0    | 0    | 0    | 0    | 20   |
| 5  | Child Victims of Murder   | 72   | 64   | 63   | 42   | 12   |
| 6  | Child Victims of Theft  | 56   | 55   | 77   | 50   | 6    |

<sup>3</sup> Fransiska Novita Eleanora & Andang Sari, "Eksistensi Lembaga Perlindungan Saksi Dan Korban Dalam Memberikan Perlindungan Terhadap Anak Korban Eksploitasi Seksual." *Supremasi Hukum: Jurnal Penelitian Hukum*. Vol. 28, No. 2 (2019). page. 156

<sup>4</sup> Lidya Rahmadani Hasibuan, Et.Al. "Hak Restitusi Terhadap Korban Anak Berdasarkan Undang Undang Nomor 35 Tahun 2014 Tentang Perubahan Atas Undang-Undang nomor 23 Tahun 2002 Tentang Perlindungan Anak Di Belawan." *Jurnal Hukum Responsif*. Vol. 7. No. 2 (2019). page.30

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|    |  |    |    |    |    |    |
|----|--|----|----|----|----|----|
| 7  | Child Victims of Traffic Accidents       | 94 | 93 | 87 | 72 | 21 |
| 8  | Child Victims of Deadly Weapon Ownership | 23 | 25 | 37 | 21 | 12 |
| 9  | Child Victims of Kidnapping              | 36 | 34 | 22 | 17 | 20 |
| 10 | Child Victims of Abortion                | 64 | 58 | 61 | 43 | 11 |
| 11 | Child Victims of Suicide                 | 16 | 17 | 18 | 11 | 4  |

Based on the data above, illustrates that the amount or number of child victims of sexual crimes or violence in the form of rape or abuse in 2020 has doubled from the previous year. Children are often victims of violence or sexual crimes in the family, school, and neighborhood. Places that are supposed to be the safest places for children are often places of sexual crimes or violence committed by people trusted by children. Being a victim of sexual violence harms the victims, such as the emergence of hopelessness, inferiority, lack of confidence, stress, and prolonged trauma.<sup>5</sup>

In 2020, there was a case that attracted public attention where the teacher and owner of the *Tahfidz Madani* Islamic Boarding School located in Bandung had committed acts of sexual violence against children who are students at the *Tahfidz Madani* Islamic Boarding School with a total of 13 victims. This case has been rolling in court and on Tuesday, February 15, 2022, the Bandung District Court Judge adjudicated a Bandung District Court decision No: 989/Pid.Sus/201/PN Bdg the judge's decision, among others, regarding restitution which reads "To charge restitution to the Ministry of Women's Empowerment and Child Protection of the Republic of Indonesia." Such a decision differs from the provisions of Article 71 letter D of Law No. 35 of 2016 concerning the Amendment to Law Number 23 of 2002 concerning Child Protection which states that restitution is the responsibility of the crime perpetrator.

### B. Restitution for Child Victims of Sexual Crimes/Violence

Law no. 8 of 1981 concerning the Criminal Procedure Code only regulates the protection of suspects or defendants to receive protection against various possible human rights violations. The 1945 Constitution states that all citizens have equal status before the law and within the judicial system there is the principle of equality before the law or equality before the law. Based on the 1945 Constitution and the principle of equality before the law, in the judicial process suspects and victims must be given the same protection. Victims must also receive legal services in the form of legal protection. Not only suspects and defendants whose rights are protected, but also victims and witnesses must be protected.<sup>6</sup>

The alteration in the aim of punishment from retributive justice to restorative justice means that the rights of victims of criminal acts must also be restored so that the rights of victims of criminal acts begin to be included in the laws and regulations. In principle, restorative justice is a concept of thinking that does not only respond to the development of the criminal justice system by focusing on the needs of the perpetrators but also involving victims and communities who feel excluded from the mechanisms that work in the current criminal justice system.<sup>7</sup>

In 2006, Indonesia issued Law No. 13 of 2006 concerning the Protection of Witnesses and Victims which was subsequently amended by Law No. 31 of 2014 to formally protect witnesses and victims. In Law No. 31 of 2014, the victim of a crime through the LPSK reserves the right to compensation and the right to restitution submitted to the court. The right to compensation is given in cases of gross human rights violations and victims of criminal acts of terrorism. The right to restitution or compensation for loss of wealth or as a result of suffering or reimbursement of medical expenses is the responsibility of the crime perpetrator.

Meanwhile, laws and government regulations governing the right to restitution or compensation for victims of criminal acts, namely:

- 1) Law of the Republic of Indonesia No. 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons;
- 2) Law of the Republic of Indonesia No. 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection;
- 3) Law of the Republic of Indonesia No. 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning the Protection of Witnesses and Victims;
- 4) Law of the Republic of Indonesia No. 12 of 2022 concerning Sexual Crimes or Violence.
- 5) Government Regulation No. 43 of 2017 concerning the Implementation of Restitution for Child Victims of Crime;
- 6) Government Regulation No. 7 of 2018 concerning Compensation and Aids to Witnesses and Victims.

Furthermore, the juridical definition of compensation or restitution according to laws and government regulations, namely:

- 1) The definition of restitution according to Law No. 21 of 2007 is the payment of compensation that is charged to the perpetrator based on a court decision that has permanent legal force for material and/or immaterial losses suffered by the victim or their heirs. (Article 1 point 13)

<sup>5</sup> Beniharmoni Harefa, *Op.Cit*, page. 181-182.

<sup>6</sup> Bambang Waluyo, *Penyelesaian Perkara Pidana Penerapan Keadilan Restoratif dan Transformatif*, ( Jakarta: Sinar Grafika,2020), page. 102

<sup>7</sup> Marwan Effendy, *Teori Hukum dari Prespektif kebijakan, perbandingan dan harmonisasi hukum Pidana*, (Jakarta: Referensi, 2014) page. 132

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- 2) The definition of restitution according to Law No. 35 of 2014 is the payment of compensation that is charged to the perpetrator based on a court decision that has permanent legal force for material and/or material losses suffered by the victim or their heirs (Explanation of Article 71 D).
- 3) The definition of restitution according to Law No. 31 of 2014 is compensation given to victims or their families by perpetrators or third parties (Article 1 number 11);
- 4) The definition of restitution according to Law No. 12 of 2022 is the payment of compensation that is charged to the perpetrator or a third party based on a determination or decision that has permanent legal force for material and/or material losses suffered by the victim or their heirs (Article 1 point 20);
- 5) The definition of restitution according to PP Number 43 of 2017 is compensation that is charged to the perpetrator based on a court decision that has permanent legal force for material and/or immaterial losses suffered by the victim or their heirs (Article 1 point 1);
- 6) The definition of restitution according to Government Regulation Number 7 of 2018 is compensation given to victims or their families by third parties.

Child victims of criminal acts also reserve the right to apply for compensation or restitution rights. The right of restitution or compensation for child victims is based on Article 71 letter D of Law No. 35 of 2014 and is given to children in conflict with the law, children who experience economic and/or sexual exploitation, child victims of pornography, child victims of kidnapping, sale, and/or trafficking, child victims of physical violence and/or psychology as well as child victims of sexual crimes.

Child victims of sexual crime or violence under the law also reserve the right to apply for compensation or restitution. Requests for compensation or restitution are submitted by child victims of criminal acts of sexual crime/violence in the form of compensation for loss of wealth or income, compensation for losses caused by suffering directly related to the sexual crime/violence, reimbursement for medical and/or psychological treatment costs, compensation loss for other losses suffered by the victim as a result of the sexual crime/violence.

Furthermore, stages of the application for the right to compensation or restitution for a child victim of a sexual crime or violence, namely:

- 1) The child victim of a sexual crime or violence submits a written request for restitution in the Indonesian Language duly stamped on paper to the court through the LPSK (Indonesian Witness and Victim Protection Agency). Submission of compensation or restitution can be made by child victims of sexual crimes/violence, their families, or their proxies. Requests for restitution can be made at the stage of an investigation, prosecution, or after a court decision. The application for restitution must include the identity of the applicant or the identity of the child victim of sexual crime or violence, a description of the crime of sexual crime or violence, the identity of the perpetrator of the sexual crime or violence, a description of the actual loss suffered by the child victim of sexual crime or violence, and the form restitution requested by child victims of sexual crimes or violence.

To strengthen the application for compensation or restitution, the application for compensation or restitution must attach:

- Photocopy of the identity of the child victims which is legalized by an authorized official;
  - Evidence of losses suffered by the victim or family made or ratified by an authorized official;
  - Evidence of detailed costs that will be or have been incurred during treatment and/or handling that is authorized by the agency or party carrying out the treatment or handling;
  - Photocopy of death certificate if the victim dies;
  - A statement letter from the Indonesian National Police indicating the applicant or child as a victim of a crime;
  - A certificate of family relations if the application is submitted by the family, or a special power of attorney if the application is submitted by the victim's power of attorney or family power of attorney;
  - Excerpt of court decisions if the case has been decided by the court and has permanent legal force.
- 2) LPSK (Indonesian Witness and Victim Protection Agency) checks the completeness of restitution submitted by child victims of sexual crimes/violence within 7 (seven) days, if declared complete LPSK conducts a substantive examination by requesting information from the victim, family, or proxies and perpetrators of criminal acts. The results of a substantive examination by the LPSK are stipulated by the LPSK Decree and its attachments.

If the submission of an application for restitution is carried out during the investigation stage, the LPSK submits a request for restitution along with its decision and considerations to the investigator to be included in the case file which will later be included in the demands of the public prosecutor. If the submission of an application for restitution is carried out at the prosecution stage, the LPSK submits a request for restitution along with its decision and considerations to the public prosecutor to be included in the demands of the public prosecutor.

If the submission of an application for restitution is made after a court decision, the LPSK submits a request for compensation or restitution along with the decision and consideration of the application to the competent court for examination and decision.

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3) The court conducts an examination and decides on the request for restitution, if the request for restitution is filed before the decision is read out, then the decision includes the restitution received by the child victims but if the request for restitution is filed after the judge's decision, then the court shall issue a Restitution Decree. The public prosecutor submits a copy of the court decision or restitution decree to the LPSK no later than 7 (seven) days after the decision or restitution decree is received by the public prosecutor. After receiving a copy of the court decision or court order, the LPSK will deliver a copy of the court decision or court order no later than 7 (seven) days after the copy of the court decision or court order is received from the public prosecutor to the victim's family or their proxies.

4) Implementation of the judge's decision on the request for restitution of the child victims

The perpetrator of the crime and/or a third party carries out the decision or restitution decree no later than 30 (thirty) days from the date the copy of the decision or decree of the court is received.

The implementation of the restitution decree made by the perpetrators of criminal acts and/or third parties is submitted to the LPSK with a copy to the court accompanied by evidence of implementation if up to the deadline of 30 (thirty) days the restitution decree has not been carried out by the perpetrators of crimes and/or third parties victims, family or proxies report to LPSK with a copy to the Chief of the Court. The chief of the court orders the perpetrators of criminal acts and/or third parties to carry out the granting of restitution no later than 14 (fourteen) days from the date the order is received.

The implementation of restitution decree by the perpetrators of criminal acts and/or third parties is submitted to the LPSK then the LPSK submits reports on the implementation of restitution to the public prosecutor accompanied by evidence of its implementation if up to the deadline of 30 (thirty) days the restitution decree have not been implemented by the perpetrators of crimes and/or third parties of the victims, their families or their proxies reported to the public prosecutor with copies to the Chief of the Court and the LPSK. The Public Prosecutor orders the perpetrators of criminal acts and/or third parties to carry out the granting of restitution no later than 14 (fourteen) days from the date the order is received.

### C. Problems in the Implementation of Compensation or Restitution for Child Victims of Sexual Crime or Violence.

The normative definition of restitution or compensation contained in Law No. 21 of 2007, Law No. 35 of 2014, Law No. 31 of 2014, Law No. 12 of 2022, Government Regulation Number 43 of 2017, and Government Regulation Number 7 of 2018 is that there is a difference in terms of charging or legal responsibility to pay restitution. Based on Law No. 21 of 2007, Law No. 35 of 2014, and Government Regulation No. 43 of 2017 those who are responsible or charged with paying restitution are the perpetrators, however, based on Law No. 31 of 2014, Law No. 12 of 2022 and Government Regulation No. 7 of 2018 those who are responsible or charged with paying restitution are the perpetrators or third parties. Moreover, in Law No. 31 of 2014, Law No. 12 of 2022, and Government Regulation No. 7 of 2018 there is no explanation of who is meant by a third party hence no clarity as to which the third party can be held accountable for paying compensation or restitution other than the perpetrator.

The definition of responsibility according to Algra, et al is the obligation to bear responsibility and bear losses suffered (if demanded), both in law and in administration.<sup>8</sup> Legal responsibility is a type of responsibility imposed on legal subjects or actors who commit acts against the law or criminal acts.<sup>9</sup> The form of responsibility imposed on perpetrators who commit criminal acts, namely the imposition of criminal witnesses.<sup>10</sup> According to the Criminal Code (KUHP) the types of crimes consist of:

- 1) Principal punishment consisting of capital punishment, imprisonment, confinement, fines, and imprisonment;
- 2) Additional punishment consisting of revocation of certain rights, confiscation of certain goods, and announcement of a judge's decision.

The principle of legal responsibility can be divided into two types, namely:

- 1) Liability based on fault; and
- 2) Strict liability.<sup>11</sup>

Liability based on fault means that error is an element that determines a person can be held accountable so that in order to be held accountable the person must be proven guilty first. Meanwhile, strict liability is defined as absolute responsibility. In strict liability or absolute responsibility, there is no need for mistakes to be made to be held accountable.

A crime perpetrator must first be proven in court against his/her guilt by the judge before being sentenced to a crime. If in the trial it is proven that the perpetrator is guilty of committing the crime then the perpetrator is sentenced to both the principal sentence and/or additional punishment. Compensation or restitution is a form of punishment imposed by a judge on perpetrators of sexual crimes or violence against children since based on the judge's belief, the perpetrators have been proven guilty in the form of sexual crimes/violence against children.

<sup>8</sup> N.E. Algra, dkk, *Kamus Istilah Hukum Fockema Andreaa Belanda Indonesia*, ( Jakarta, Binacipta, 1983), page. 68

<sup>9</sup> Salim dan Erlies Septiani Nurbani, *Penerapan Teori Hukum pada Penelitian Disertasi dan Tesis Buku Kedua*, (Depok: RajaGrafindo, 2017), page. 208

<sup>10</sup> *Ibid*, page. 209

<sup>11</sup> Koesnadi Hardjosoemantri, *Hukum Tata Lingkungan*, (Yogyakarta: Gadjah Mada University Press, 1998). page. 334-335



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Based on liability based on fault, those who are responsible for paying compensation or restitution to child victims of sexual violence are the perpetrators of criminal acts and not third parties who have not committed sexual crimes or violence against children. Paying compensation or restitution is a form of responsibility for the perpetrator based on the mistakes that have been made and these mistakes have been proven guilty in court.

Apart from differences in terms of imposing responsibility for paying compensation or restitution, in Law No. 21 of 2007, Law No. 35 of 2014, Law No. 31 of 2014, Law No. 12 of 2022, Government Regulation No. 43 of 2017, and Government Regulation No. 7 of 2018, in Law No. 21 of 2007, Law No. 35 of 2014, Law No. 31 of 2014 the restitution payment is fully passed over to the perpetrator without any forcing efforts that can be made so that payment of restitution to victims of sexual violence is very dependent on the will of the perpetrator. This causes restitution to be often ineffective and does not provide benefits to victims of sexual violence because perpetrators often choose not to pay restitution.

The definition of effectiveness according to the Great Dictionary of the Indonesian Language (KBBI) includes, among other things, having an effect (consequences, influence, and impression), being able to bring results, and being effective (about effort, action). Meanwhile, legal effectiveness according to Hans Kelsen is "whether people actually act in a way to avoid sanctions threatened by legal norms or not, and whether these sanctions are actually implemented if the conditions are fulfilled or not fulfilled."<sup>12</sup>

There are three focuses on the study of legal effectiveness theory, which include:

- 1) Success in law enforcement.
- 2) Failure in law enforcement.
- 3) Factors that influence it.<sup>13</sup>

Influencing factors can be studied from:

- 1) Aspects of success; and
- 2) Aspects of failure.<sup>14</sup>

Factors that influence failure in implementing the law are due to blurred or unclear legal norms, corrupt legal officials, or people who are impatient or obedient to the law, or the facilities to support the implementation of the law are very minimum.<sup>15</sup>

Factors that cause ineffective compensation or restitution to child victims of sexual crime or violence include blurred or unclear legal norms in terms of implementation in the field due to Law No. 21 of 2007, Law No. 35 of 2014, Law No. 31 of 2014, Government Regulation No. 43 of 2017, and Government Regulation No. 7 of 2018 only regulates the process of filing for restitution from the application stage to the court decision but at the implementation stage or the execution, stage restitution becomes unclear since there is no coercive effort that can be made against the perpetrators of sexual crimes/violence against children to pay restitution to child victims of sexual violence because everything depends on the wishes or attitude of the perpetrator so that in the end the child victim still does not benefit from the right to apply for restitution provided by law since perpetrators of sexual crimes/violence often prefer to undergo punishment jail instead of paying restitution fees.

On May 9, 2022, the government issued Law No. 12 of 2022 concerning Sexual Crimes/Violence. Law No. 12 of 2022 contains the right to compensation or restitution for victims of sexual violence, including child victims of sexual crimes or violence. Law No. 12 of 2022 article 31 paragraph (3) authorizes investigators to take action in the form of confiscation of property belonging to perpetrators of crimes of sexual violence. Property belonging to the perpetrator that had been confiscated at the implementation stage of the decision based on the judge's decision was auctioned off to pay compensation or restitution.

Confiscation of property belonging to perpetrators of criminal acts can be carried out from the investigation stage, so that in order to be able to confiscate property belonging to perpetrators of sexual crimes or violence against children by investigators, child victims of sexual crime or violence must, from the inspection stage to the investigation stage, have filed for compensation. or restitution through the LPSK so that investigators can confiscate property belonging to perpetrators of sexual crimes or violence to pay restitution submitted by child victims of sexual crime or violence.

Confiscation of property belonging to perpetrators of sexual crimes or violence by investigators can guarantee child victims of sexual crimes/violence that the request for compensation or restitution that has been submitted will be paid for by the perpetrator of the crime by auctioning off the property belonging to the perpetrator of the sexual crime/violence.

## CONCLUSION

1. The procedure for requesting compensation or restitution for victims of sexual crimes or violence can be submitted from the stage of an investigation, prosecution, or even after the decision by the judge, by the child victims through the Indonesian Witness and Victim Protection Agency (LPSK) and the responsibility for paying such restitution should be the responsibility of the perpetrator.

<sup>12</sup> Hans Kelsen, *Teori Umum tentang Hukum dan Negara*, (Bandung:Nusa Media,2006), page. 39

<sup>13</sup>Salim dan Erlies Septiani Nurbani , *Penerapan Teori Hukum pada Penelitian Tesis dan Disertasi*, (Jakarta:RajaGrafindo,2016), page. 303

<sup>14</sup> Salim dan Erlies Septiani Nurbani , *Penerapan Teori Hukum pada Penelitian Tesis dan Disertasi*, (Jakarta:RajaGrafindo,2016), page. 303-304

<sup>15</sup> *Ibid*, page. 304

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2. The imposition of compensation or restitution can be effective if the assets belonging to the accused or perpetrator of sexual crimes/violence are confiscated. Furthermore, the confiscated assets will be auctioned off as a calculation of compensation or restitution payment that will be given to the child victims as stated in the Law of the Republic of Indonesia No. 12 of 2022.

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